

1    **ORDINANCE NO. \_\_\_**

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3            **AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL**  
4 **DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES**  
5 **AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND**  
6 **LAW FOR THE PURPOSE OF SECURING AND DEVELOPING**  
7 **INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE**  
8 **APPROVAL OF A BOND PURCHASE AGREEMENT AND A PAYMENT**  
9 **IN LIEU OF TAXES AGREEMENT IN CONNECTION THEREWITH; TO**  
10 **AUTHORIZE THE EXECUTION AND DELIVERY OF A TRUST**  
11 **INDENTURE SECURING THE BONDS; TO AUTHORIZE AND**  
12 **PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT,**  
13 **THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF,**  
14 **AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION**  
15 **AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE**  
16 **PROJECT; TO DECLARE AN EMERGENCY; AND FOR OTHER**  
17 **PURPOSES.**

18  
19            **WHEREAS**, the City of Little Rock, Arkansas (the “City”) is authorized under the provisions of  
20 Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development  
21 Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* (collectively, the “Act”), to own, acquire,  
22 construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof  
23 by the issuance of bonds payable from the revenues derived from such facilities; and

24            **WHEREAS**, HMS Mfg. Co. (the “Company”) has evidenced its interest in acquiring, constructing,  
25 and equipping an industrial facility within the City if permanent financing can be provided through the  
26 issuance of bonds under the authority of the Act; and

27            **WHEREAS**, the City has agreed to cooperate with the Company in the acquisition, construction, and  
28 equipping of an industrial facility within the City, consisting of the acquisition of land and/or leasehold  
29 rights, construction and renovation of buildings, infrastructure and improvements, and acquisition and  
30 installation of equipment for the manufacture, development, testing, production and warehousing of  
31 housewares that promote home organization located at 6901 Lindsey Road in Little Rock (the “Project”);  
32 and

1       **WHEREAS**, to provide permanent financing of the Project costs, necessary costs and expenditures  
2 incidental thereto, and the cost of the issuance of Bonds, the City will issue its taxable industrial  
3 development revenue bonds under the provisions of the Act designated “City of Little Rock, Arkansas  
4 Taxable Industrial Development Revenue Bonds (HMS Project), Series 20\_\_,” in the principal amount of  
5 not to exceed Thirty-five Million Dollars (\$35,000,000.00) (the “Bonds”); and

6       **WHEREAS**, the Bonds will be issued pursuant to the provisions of a Trust Indenture, (the “Trust  
7 Indenture”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the  
8 mutual agreement of the City and the Company; and

9       **WHEREAS**, the City and the Company intend to enter into a Lease Agreement (the “Lease  
10 Agreement”) relating to the real and personal property constituting the Project, which contemplates that  
11 the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental  
12 payments therefor together with other moneys available shall be sufficient to pay debt service on the  
13 Bonds and all related costs; and

14       **WHEREAS**, to induce the City to proceed with the issuance of the Bonds for the purpose indicated,  
15 which will inure to the benefit of the Company, the City and the Company will enter into a Payment in  
16 Lieu of Taxes Agreement (“PILOT Agreement”) in substantially the form presented at this meeting; and

17       **WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the  
18 Board of Directors of the City on November 19, 2019, following publication of notice of the hearing and  
19 that having heard all persons desiring to be heard in the matter, the City has taken under advisement the  
20 comments and statements of such persons; and

21       **WHEREAS**, the City proposes to sell the Bonds to an affiliate of the Company (the “Purchaser”)  
22 pursuant to a Bond Purchase Agreement by and between the City and the Purchaser; and

23       **WHEREAS**, prior to issuance of the Bonds, the Company obtained independent loans from one (1)  
24 or more lenders secured by liens on, or security interests in, title to all or part of the Project granted  
25 pursuant to various agreements, instruments and documents; and

26       **WHEREAS**, the City acknowledges and consents to all liens and encumbrances on, security interests  
27 in and rights to, the title to the Project granted by the Company and acknowledges that the Company’s  
28 interests in the Project will be transferred to City subject to the such liens, encumbrances and security  
29 interests and such acknowledgement and consent will be evidenced through the execution of a  
30 Recognition of Prior Interests, Nondisturbance and Attornment Agreement between the City, the  
31 Company, and the lenders of the Company (or such lenders’ agents) benefitting from such lien,  
32 encumbrance or security interest (the “RNA Agreement”); and

33       **WHEREAS**, the completion of the Project will furnish additional employment opportunities, and will  
34 furnish other benefits to and be in the best interest of the City and its residents;

1        **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY**  
2 **OF LITTLE ROCK, ARKANSAS:**

3        **Section 1.** There be, and there is hereby authorized and directed the following:

4        (a) The Bonds shall be issued in one or more series in an aggregate principal amount of not to exceed  
5 Thirty-five Million Dollars (\$35,000,000.00), and the Bonds shall be sold to the Purchaser for a price of  
6 par plus costs of issuance upon the terms and conditions set forth in the Bond Purchase Agreement.

7        (b) The execution and delivery of the PILOT Agreement by the Mayor on behalf of the City, in  
8 substantially the form submitted to this meeting, with such changes as shall be approved by such persons  
9 executing the document, its execution to constitute conclusive evidence of such approval, is hereby  
10 authorized and directed. An executed copy of the PILOT Agreement shall be filed in the City Clerk's  
11 Office.

12        (c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the  
13 execution of any necessary architectural, engineering, or construction contracts or the acceptance of an  
14 assignment of any such contracts previously executed by the Company for the construction and equipping  
15 of the Project on behalf of the City is hereby authorized and directed.

16        **Section 2.** The issuance of the Bonds in the total principal amount of not to exceed Thirty-five  
17 Million Dollars (\$35,000,000.00) in one or more series is hereby authorized. The Bonds shall be issued  
18 in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a  
19 rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be  
20 set forth in the Trust Indenture.

21        That to further prescribe the terms and conditions upon which the Bonds are to be executed,  
22 authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when  
23 requested to do so by the Company) to execute and acknowledge the Trust Indenture, and the City Clerk  
24 is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of  
25 the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust  
26 Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby  
27 approved in substantially the form submitted to this meeting (and a copy of such Trust Indenture is on file  
28 with the City Clerk and available for inspection by any interested person), and the Mayor is hereby  
29 authorized to confer with the Trustee and the Company in order to complete the Trust Indenture in  
30 substantially the form submitted to this meeting with such changes as shall be approved by such persons  
31 executing the document, their execution to constitute conclusive evidence of such approval.

32        **Section 3.** There be, and there is hereby, authorized and directed the execution and delivery of the  
33 Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and  
34 deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in  
35 substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the

1 City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to  
2 confer with the Company in order to complete the Lease Agreement in substantially the form submitted to  
3 this meeting, with such changes as shall be approved by such persons executing the document, their  
4 execution to constitute conclusive evidence of such approval.

5 **Section 4.** There be, and there is hereby, authorized and directed the execution and delivery of the  
6 Bond Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge,  
7 and deliver the Bond Purchase Agreement for and on behalf of the City. The Bond Purchase Agreement  
8 is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby  
9 authorized to confer with the Purchaser in order to complete the Bond Purchase Agreement in  
10 substantially the form submitted to this meeting (and a copy of such Bond Purchase Agreement is on file  
11 with the City Clerk and available for inspection by any interested person), with such changes as shall be  
12 approved by such persons executing the document, their execution to constitute conclusive evidence of  
13 such approval.

14 **Section 5.** There be, and there is hereby, authorized and directed the execution and delivery of the  
15 RNA Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and  
16 deliver the RNA Agreement for and on behalf of the City. The RNA Agreement is hereby approved in  
17 substantially the form submitted to this meeting (and a copy of such RNA Agreement is on file with the  
18 City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to  
19 confer with the Company and lenders of the Company (or such lenders' agents) in order to complete the  
20 RNA Agreement in substantially the form submitted to this meeting, with such changes as shall be  
21 approved by such persons executing the document, their execution to constitute conclusive evidence of  
22 such approval.

23 **Section 6.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and  
24 directed to do any and all things necessary to effect (i) the execution of the Lease Agreement, (ii) the  
25 performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the  
26 Trust Indenture, (iv) the performance of all obligations of the City under and pursuant to the Trust  
27 Indenture, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the PILOT  
28 Agreement, (vii) the performance of the City's obligations under the PILOT Agreement, (viii) the  
29 execution and delivery of the Bond Purchase Agreement, (ix) the performance of the City's obligations  
30 under the Bond Purchase Agreement, (x) the execution and delivery of the RNA Agreement, (xi) the  
31 performance of the City's obligations under the RNA Agreement, and (xii) the performance of all other  
32 acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The  
33 Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection  
34 with the issuance of the Bonds and in connection with on-going rights and obligations that arise after  
35 issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other

1 instruments that may be required for the carrying out of such authority or to evidence the exercise thereof,  
2 including, but not limited to, the execution of one (1) or more Home Office Payment Agreements,  
3 Memorandums of Lease, Delivery Instructions and other closing certificates.

4 **Section 7.** Since the City is involved with the acquisition, constructing, and equipping of a complex  
5 industrial project, requiring highly specialized work and specialized types of machinery and equipment, in  
6 compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby determined by the Board of  
7 Directors that competitive bidding be, and the same is hereby, waived as to this particular industrial  
8 project. This action is taken by the Board of Directors pursuant to applicable laws of the State of  
9 Arkansas, including particularly the Act.

10 **Section 8.** All actions heretofore taken by the City, the Company, and the Purchaser in connection  
11 with the issuance, offer and sale of the Bonds and the development and completion of the Project are  
12 hereby in all respects ratified and approved.

13 **Section 9. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or  
14 word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or  
15 adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and  
16 effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this  
17 ordinance.

18 **Section 10. Repealer.** All ordinances or resolutions of the City in conflict herewith are hereby  
19 repealed to the extent of such conflict.

20 **Section 11.** There is hereby found and declared to be an immediate need for the securing and  
21 developing of substantial industrial operations in order to retain exiting employment, provide additional  
22 employment, alleviate unemployment, and otherwise benefit the public health, safety, and welfare of the  
23 City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the  
24 other action authorized herein are immediately necessary in connection with the securing and developing  
25 of substantial industrial operations and deriving the public benefits referred to above. It is therefore,  
26 declared that an emergency exists and this ordinance, being necessary for the immediate preservation of  
27 the public health, safety, and welfare, shall be in force and take effect immediately upon and after its  
28 passage.

29 **PASSED: November 19, 2019**

30 **ATTEST:**

**APPROVED:**

31  
32 /s/ Susan Langley  
33 Susan Langley, City Clerk

/s/ Frank D. Scott, Jr.  
Frank D. Scott, Jr., Mayor

1 **APPROVED AS TO LEGAL FORM:**

2

3 /s/ Thomas M. Carpenter

4 **Thomas M. Carpenter, City Attorney**